SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1357

WALTER R. REYNOLDS, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

REPLY TO THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION

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In its Memorandum in Opposition the United States principally relies on the opinion below, apparently with the hope that the substantial issues presented by Reynolds' petition will thus become muted. In this reply we seek to rectify the few independent observations made in the Memorandum in Opposition.

The Search and Seizure Issue

In a brief paragraph (Memorandum in Opposition, pp. 4-5) the United States urges that the pendency in this Court of *Couch* v. *United States,* No. 71-889, *cert. granted* April 3, 1972, affords no reason for granting the writ sought by petitioner because "there was no use here of the summons procedure at all." But if petitioner Couch is held entitled to relief, *a fortiori* this petitioner will be. From the standpoint of the Fourth Amendment, the invasion is surely worse when, as here, the government has used a purported civil tax audit procedure without disclosing that its real purpose is criminal investigation, than when, as in *Couch,* the government has proceeded by summons and the taxpayer, *having been put on notice* that he is being investigated for criminal tax fraud, has an opportunity to contest such use of civil tax procedures.

Of course, as the United States says (Memorandum in Opposition, p. 5), Reynolds might have stopped Agent Evangelist's investigation at any time. But that observation is beside the point: as Reynolds did not know that Evangelist was looking for evidence of criminality, he did not have an opportunity to make a knowing choice between permitting him to search or evicting him from his office.

The position taken by the United States in its Memorandum in Opposition further underscores the need for comprehensive guidance from this Court in summons and non-summons cases upon the question of using civil tax inquiries for criminal law enforcement purposes. See Reynolds' petition, pp. 15-16.

The Grand Jury Issue

The United States misleadingly asserts that "the indictment . . . had been read to the grand jury"

(Memorandum in Opposition, p. 3). As is documented in Reynolds' petition (pp. 7-8), however, no member of the grand jury read or listened to a reading of the complete indictment. It is this uncontroverted fact that is at the root of petitioner Reynolds' contention that the indictment was a nullity under the Fifth Amendment. Because respondent misstates what actually happened, its Memorandum in Opposition ignores the substantial Fifth Amendment question raised in Reynolds' petition (pp. 16-17).

The Cross-Examination Issue

The United States writes (Memorandum in Opposition, p. 3) that Eastern issued mortgages "[r]elying on" the information in false loan documents. But the only questions propounded at trial to determine whether Eastern's officials in fact relied upon such information in granting the loans charged in the indictment, were questions propounded by defense counsel and successfully objected to by the government. See Reynolds' petition, indented paragraph on p. 11. It was with respect to this central issue of reliance that the trial court erroneously precluded cross-examination of the two testifying bank officers. See Reynolds' petition, pp. 17-18.

The most that can be said in favor of the tactic of the United States of relying upon the opinion below, instead of addressing itself to Reynolds' petition, is that it thereby was not required to defend the action of the Court of Appeals. That Court, in order to affirm, found the trial court to have been "mistaken" and "confused" in its perception of its own rulings limiting cross-examination at the prosecutor's request. See Reynolds' petition, pp. 17-18.

The Freeman Petition

Finally, the United States notes (Memorandum in Opposition, p. 1, footnote 1) that this Court has denied co-defendant Freeman's petition for a writ of certiorari (No. 71-6391) on June 7, 1972. Freeman's *pro se* petition did not present the question of improper restriction on cross-examination. While Freeman's petition did challenge the right of the "Metro Project" investigators to obtain records without disclosing that they were engaged in a criminal investigation, records were not obtained from Freeman, and he could not therefore properly raise a search issue. Freeman's petition also challenges the validity of the indictment but his argument fails to develop with clarity the constitutional error in connection with the indictment's return. Compare Reynolds' petition, pp. 16-17. The denial of Freeman's petition should therefore have no bearing on the disposition of Reynolds' petition.

Respectfully submitted,

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